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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM _____
NO. 73-1

STATE OF FLORIDA,

Petitioner,

-vs-

KEITH IVAR ANDERSEN,

Respondent.

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

STATEMENT OF THE CASE AND FACTS

The statements of the case and facts contained in petitioner's Petition for Writ of Certiorari previously filed in the above-styled cause are made a part hereof by reference.

QUESTION PRESENTED

WHETHER THE AFFIDAVIT IN THIS CASE, BEING BASED UPON INFORMATION OBTAINED BY LAW ENFORCEMENT OFFICERS ENGAGED IN THE DETECTION AND ARREST OF CRIMINAL ACTIVITY, IS SUFFICIENT, UNDER UNITED STATES SUPREME COURT DECISIONS CONSTRUING THE FOURTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA, TO ESTABLISH PROBABLE CAUSE TO AUTHORIZE ISSUING A SEARCH WARRANT?

REASONS FOR GRANTING THE WRIT

Petitioner respectfully submits that the Florida Supreme Court clearly decided a federal question in this case, inasmuch as the Court's opinion relied solely on federal constitutional principles, and never once referred to a state statute or the state constitution.

On page three of the Court's opinion, there will be found several United States Supreme Court cases and the federal principles announced therein governing affidavits for search warrants. In addition, two Florida cases are cited, State v. Smith, 233 So. 2d 396 (Fla. 1970), and Reed v. State, 267 So. 2d 70 (Fla. 1972), that unmistakably and exclusively employ federal consti-

tutional principles in passing upon the sufficiency of affidavits for search warrants.

After reviewing these federal constitutional standards, the Court's opinion states:

> "Applying the foregoing principles to the affidavit sub judice, its tensile strength is stretched beyond endurance ..."
> (Page 3, Appendix I, Petition for Writ of Cetiorari, emphasis supplied.)

It is clear, therefore, that state authorities, claimed by respondent to be the basis for the opinion of the Florida Supreme Court, were never relied upon by the Court in reaching its conclusion.

Accordingly, respondent has shown no basis for his assertion that the judgment below was based on an adequate and independent non-federal ground. See Steele v. Louisville and Nashville R. Co., 323 U. S. 192, 197, note 1, 89 L. Ed 173, 180, note 1, 65 S. Ct. 226; Indiana Ex Rel. Anderson v. Brand, 303 U. S. 95, 98, 82 L. Ed 685, 689, 690, 58 S. Ct. 443; and Poafpybitty v. Skelly Oil Co., 390 U. S. 365, 375, 376, 19 L. Ed 2d 1238, 1246, 88 S. Ct. 982. Accord: International Steel and Iron Co. v.

National Surety Co., 297 U. S. 657, 666, 80 L. Ed 961, 967, 56 S. Ct. 619, where the Court stated:

> "'The rule that, when the decision of a state court may rest upon a non-federal ground adequate to support it, this court will not take jurisdiction to determine the federal question, has no application where, as here, the non-federal ground might have been considered by the state court but was not.'" (Citing Grayson v. Harris, 267 U. S. 352, 358, 69 L. Ed 652, 655, 45 S. Ct. 317, emphasis supplied.)

CONCLUSION

For the foregoing reasons, in addition to those previously set forth in the Petition for Writ of Certiorari, a Writ of Certiorari should issue to review the decision of the Florida Supreme Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing Petitioner's Reply Brief have been furnished respondent's counsel, the Honorable Wilfred C. Varn and the Honorable Thomas M. Ervin, Jr., ERVIN VARN, JACOBS & ODOM, Post Office Box 1170, Tallahassee, Florida, via U.S. Mail, this _____ day of August, 1973.

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OF
COUNSEL FOR PETITIONER